

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SIMONE JORDAN,

Plaintiff,

v.

PATRICIA CARUSO, et al

Defendant,

CASE NO. 06-10979

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

PAUL J. KOMIVES  
UNITED STATES MAGISTRATE JUDGE

**ORDER**

**REMANDING MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND  
RECOMMENDATION TO MAGISTRATE JUDGE FOR CONSIDERATION OF  
(1) DEFENDANTS' RULE 56(b) MOTION, (2) WHETHER THE DE MINIMIS  
DOCTRINE APPLIES TO PLAINTIFF'S ALLEGATIONS, AND (3) THE  
APPLICABILITY OF SIXTH CIRCUIT PRECEDENT *SPIES v. VOINOVICH*, 173 F.3D  
398, 406 (6th Cir. 1999), RE RELIGIOUS NAME CHANGES DURING CUSTODY**

On September 25, 2008, the Court received a Supplemental Report and Recommendation ("R&R") regarding Defendants' Rule 12(b) Motion to Dismiss or Alternative Rule 56(b) Motion for Summary Judgment in the above-captioned case. (Doc. No. 22). On October 6, 2008, Defendants filed objections to the R&R, which, in part, objected to the Magistrate Judge's decision to construe Defendants' motion as only a motion to dismiss under Rule 12(b)(6). (Doc. No. 24).

The supplemental R&R did not consider Defendants' motion for summary judgment, even though Defendants' motion is clearly both a Rule 12(b)(6) and a Rule 56(b) motion. The Magistrate construed Defendants' motion as strictly a motion to dismiss because Defendants did

not attach any evidence to their motion. (Supp. R&R 7). However, Rule 56(b) states: “A party against whom relief is sought may move, at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.” Fed. R. Civ. P. 56(b). Therefore, Defendants need not support their summary judgment motion with affidavits or other evidence in order to obtain a ruling on the motion. Because the motion for summary judgment was properly brought, the Court requests that the Magistrate Judge provide expeditious consideration of the summary judgment motion and supply this Court with a supplemental recommendation.

The Court also remands for consideration of the issue of whether Defendants actions were *de minimis* in nature, *see* R&R p. 21, and also for consideration of the applicability of Sixth Circuit precedent *Spies v. Voinovich*, 173 F.3d 398, 406 (6th Cir. 1999) with regard to religious name changes during custody, *see* R&R p. 8.

**SO ORDERED.**

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: November 24, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on November 24, 2008.

s/Denise Goodine  
Case Manager